

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 03-41
Table of Allotments,)	RM-10642
FM Broadcast Stations.)	
(Lincoln City and Monmouth, Oregon))	

NOTICE OF PROPOSED RULE MAKING

Adopted: February 12, 2003

Released: February 18, 2003

Comment Date: April 11, 2003

Reply Comment Date: April 28, 2003

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed by Radio Beam, LLC ("Radio Beam"), licensee of Station KSND, Channel 236C2, Lincoln City, Oregon. Radio Beam requests the substitution of Channel 236C3 for Channel 236C2 at Lincoln City, Oregon, reallocation of Channel 236C3 to Monmouth, Oregon and modification of the license for Station KSND to specify Monmouth as its community of license. Radio Beam states that if the Commission grants its request, Radio Beam will file an application for Channel 236C3 at Monmouth.

2. Radio Beam seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ In support of its proposal, Radio Beam states that the proposed use of Channel 236C3 at Monmouth is mutually exclusive with Station KSND's existing authorization at Lincoln City. Radio Beam further states that the adoption of its proposal will result in a preferential arrangement of allotments consistent with the *FM Allotment Priorities*,² by providing Monmouth, Oregon, (population of 7,741),³ with its first local aural transmission service. The allotment of Channel 236C3 to Monmouth would not deprive Lincoln city (population of 7,437) of its sole local transmission outlet, because Lincoln City would retain local service from Station KCRF-FM and Station KBCH(AM). Radio Beam provided information showing community status for Monmouth, stating that the community is not located in an urbanized area and the station will not cover more than 50% of an Urbanized Area with its 3.16 mV/m contour. Radio Beam states that the reallocation will require a transmitter site change. Station KSND's service contour at Lincoln City encompasses 4,281 square kilometers with 51,814 people while the service contour at the new site at Monmouth would encompass 4,808 square kilometers with

¹ See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

² See *Revision of FM Assignment Policies and Procedures* ("FM Allotment Priorities"), 90 FCC 2d 88 (1982). The allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service and (4) other public interest matters [co-equal weight is given to priorities (2) and (3)].

³ Population figures reported herein were taken from the 2000 U.S. Census.

216,153 people for a net gain of 164,339 people.⁴

3. Since Radio Beam's reallocation request is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the authorization of Station KSND without entertaining competing expressions of interest in the use of Channel 236C3 at Monmouth, Oregon. Channel 236C3 can be allotted to Monmouth, Oregon, consistent with the technical requirements of the Commission's Rules at Radio Beam's specified site, utilizing coordinates 44-50-43 and 123-30-07. This site is 20.8 kilometers (13.0 miles) west of the community.

4. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>Channel Nos.</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Lincoln City, Oregon	236C2, 244C2	244C2
Monmouth, Oregon	-----	236C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before April 11, 2003, and reply comments on or before April 28, 2003, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the Radio Beam's counsel, as follows:

John E. Fiorini III
Evan Henschel
Wiley Rein & Fielding LLP
1776 K Street NW
Washington, D. C. 20006

7. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington,

⁴ According to Petitioner, there would be an actual gain of 203,770 people within 2,161 square kilometers and a loss of 39,431 people within an area of 1,664 square kilometers. Most of the loss area would retain at least five reception services but a staff engineering analysis reveals that 1,024 people within 47 square kilometers would be reduced from five to four reception services.

D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁵

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

Attachment: Appendix

⁵ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW, Washington, D.C.